

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION**

TERRICK TERRELL NOONER, PLAINTIFF

and

DON WILLIAMS DAVIS INTERVENOR PLAINTIFF

and

JACK HAROLD, JONES, JR. INTERVENOR PLAINTIFF

No. 5:06CV00110 SWW  
VS.

LARRY NORRIS, Director,  
Arkansas Department of Correction;  
GAYLON LAY, Warden,  
Arkansas Department of Correction;  
WENDY KELLY, Deputy Director for  
Health and Correctional Programs;  
JOHN BYUS; Administrator, Correctional  
Medical Services, Arkansas Department of Correction; and  
OTHER UNKNOWN EMPLOYEES,  
Arkansas Department of Correction

DEFENDANTS

**ORDER**

This is an action under 42 U.S.C. § 1983 by Arkansas death row inmates challenging the constitutionality of the State's protocol for execution by lethal injection. Inmate Terrick Terrell Nooner ("Nooner") initiated the lawsuit, and inmates Don William Davis ("Davis"), Jack Harold Jones ("Jones"), and Frank Williams intervened as party plaintiffs. Before the Court is Davis's motion for a stay of execution (docket entry # 113) and Defendants' response in opposition (docket entry #114). Davis's execution is currently scheduled for November 8, 2007. After

careful consideration, and for the reasons that follow, the motion for a stay will be granted.

Shortly after Davis moved to intervene in this case, Governor Mike Huckabee scheduled his execution for July 5, 2006. Davis moved for a stay of execution in order to permit him to pursue his challenge to the lethal injection protocol, and the Court granted his motion. However, the Eighth Circuit vacated the stay on the ground that this Court applied the wrong standard in determining whether Davis had unreasonably delayed bringing his claim. *See Nooner v. Norris*, 491 F.3d 804 (8<sup>th</sup> Cir. 2007).

On July 31, 2007, Governor Mike Beebe scheduled Nooner's execution for September 18, 2007, and Nooner filed a motion for a stay of execution. On August 21, 2007, Governor Beebe set an October 16, 2007 execution date for Jones, and Jones filed a motion for a stay of execution. On September 11, 2007, the Court entered an order denying the requested stays of execution on grounds that (1) Plaintiffs were unlikely to succeed on the merits; (2) the balance of harms and public interest weighed against granting stays; and (3) in accordance with the standard set forth in *Nooner v. Norris*, 491 F.3d 804 (8<sup>th</sup> Cir. 2007), Plaintiffs had unreasonably delayed bringing their claims. *See* docket entry #93.

Jones appealed and petitioned the Eighth Circuit for a stay of execution. In support of his motion for a stay, Jones cited the United States Supreme Court's grant of certiorari in *Baze v. Rees*, 217 S.W.3d 207 (Ky. 2006), *cert. granted*, – U.S.—, 2007 WL 2850507 (U.S. Oct. 3, 2007), a case challenging Kentucky's lethal injection protocol. *See* Appellant's Motion for Stay of Execution, *Jones v. Norris*, No. 07-3165 (8<sup>th</sup> Cir. Sept. 30, 2007). Jones also argued that, even under existing law, this Court abused its discretion in denying his motion for a stay. *Id.*

On October 11, 2007, the Eighth Circuit entered a one-sentence order granting Jones's motion for a stay of execution. *See Judge Order, Jones v. Norris*, No. 07-3165 (8<sup>th</sup> Cir. October 11, 2007)(Mem.). The State filed an application with the Supreme Court to vacate the stay, and the Supreme Court entered a one-sentence order denying the application. *See Norris v. Jones*, — S. Ct —, 2007 WL 2999165 (U.S. Oct. 16, 2007)(Mem.).

After careful review of the record and the memorandum orders issued by the Eighth Circuit and the Supreme Court, the Court finds no rational basis for granting a stay of execution for Jones and denying the same for Davis. Accordingly, the Court finds that Davis's motion should be granted.

IT IS THEREFORE ORDERED that Plaintiff Don William Davis's motion for a stay of execution (docket entry #113) is GRANTED.

IT IS SO ORDERED THIS 30<sup>TH</sup> DAY OF OCTOBER, 2007.

/s/Susan Webber Wright  
UNITED STATES DISTRICT JUDGE